



American Federation of Television and Radio Artists

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April 13, 1995

Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

RE: MM Docket No. 91-221/94-322
Notice of ~~Proposed~~ Rule Making: Review of Commission's
Regulations Governing Television Broadcasting

Dear Chairman Hundt and Fellow Commissioners:

Enclosed please find one original and nine copies of comments filed by the American Federation of Television and Radio Artists in the above-referenced Docket. Please note that these comments are countersigned and endorsed by the Department for Professional Employees of the AFL-CIO.

In advance, thank you for your consideration.

Sincerely

Kim A. Roberts
Assistant National Executive Director

cc: Jack Golodner, President
Department for Professional Employees, AFL-CIO

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COMMENTS OF AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS

I. INTRODUCTION

The American Federation of Television and Radio Artists (AFTRA) is a national labor organization representing over 70,000 members who are employed in the news and entertainment industries. AFTRA members are seen and heard on television and radio stations throughout the United States. AFTRA's membership includes newsmen and performers employed by the three major networks and Fox, their owned and operated stations, as well as by local radio and television stations owned by independents and group owners. AFTRA maintains over 300 collective bargaining agreements with the major networks, and local independently owned and group owned radio and television properties.

AFTRA has previously filed reply comments with the Commission in the matter of MM Docket No. 91-221, which preceded the Notice of Proposed Rule Making (NPRM) issued in MM Docket No. 94-322. AFTRA's comments in MM Docket No. 94-322 now address the effects of the proposed increases in television ownership rules upon diversity in news and public affairs programming.

Based upon its experience in the television and radio industries, AFTRA believes that the Commission's stated rationale in previous ownership rulings, i.e., that ownership limitations should operate in part to foster diversity of ownership in order to

promote the expression of varied viewpoints and programming, is still a legitimate basis for analysis and rulemaking by the Commission.¹ AFTRA further believes that increases in broadcast television ownership caps on either a local or national level at this time would be contrary to this goal, and adverse to the public interest.

For reasons which will be set forth below, AFTRA submits that increases in the ownership limitations will operate to reduce, rather than enhance diversity of opinion, particularly in local news and public affairs programming. As the Commission has observed in the NPRM, diversity of opinion and diverse programming is in the best interests of the public.² It is therefore axiomatic that if increases in television ownership limitations will tend to reduce diversity, such increases will not operate in the best interests of the public.³

¹ NPRM at 4.

² NPRM at 24.

³ However, as noted below, AFTRA does support small increases in ownership levels which are directly tied to providing opportunities for traditionally excluded groups, such as women and minorities, to enter the broadcast marketplace. AFTRA notes that the Commission is addressing the issue of the difficulties faced by minorities and women with respect to participation in the broadcast marketplace in the Notice of Proposed Rule making in MM Docket No. 94-150, FCC 94-324, ___ FCC Rcd ___ (released January 12, 1995).

II. INCREASES IN TELEVISION OWNERSHIP LIMITATIONS ARE NOT WARRANTED AT THIS TIME

AFTRA agrees with the factual observations made by the Commission in the NPRM regarding the increase in the availability of different video outlets such as cable, MMDS, DBS, etc., AFTRA disagrees, however, with observers who conclude that the existence of these new services should be a basis for increasing limitations in television.

AFTRA concurs with the Commission's conclusion that MMDS, DBS, VCR's, etc., should not be included in a competitive analysis with broadcast television to determine whether there is sufficient diversity to warrant increases in current television ownership limitations.⁴ However, AFTRA further submits that the Commission should also not use cable programming as a measure by which to determine whether there is sufficient diversity of programming in the broadcast television market to warrant increasing national or local ownership rules. First, cable programmers are not obligated to meet local public interest news and public affairs requirements, and should therefore not be compared to licensees of free broadcast television properties who are, and should be, required to provide minimal levels of news and local programming in the interest of the public. Second, over one-third of the American public does not receive cable programming.⁵ Over the air broadcasting is the only

⁴ NPRM at 35.

"free" video medium which is accessible to all Americans, regardless of economic status. The Commission should ensure that the only video medium which is accessible to all Americans -- over the air free television -- be as diverse as possible, and the diversity analysis should not include cable or any other "fee-based" video medium.

There are no compelling reasons at this point in time to increase ownership limitations in television. Current ownership restrictions do not hinder competition, nor do they hinder broadcast owners' ability to compete effectively for viewers and advertising dollars. Despite the increase in new services such as cable, MMDS, DBS, etc., the television industry has consistently reported increases in advertising revenues, which are the sources of income for television station owners. For example, 1994 revenues generated by the owned and operated television stations of Capital Cities/ABC, CBS, NBC and Fox increased by 9%, 13%, 8%, and 27% respectively from 1993 levels, with the owned and operated television stations of these companies providing a total combined profit of \$1.243 billion.⁶ In addition, 1994 advertising revenues for broadcast television overall increased by 15% over 1993 levels from \$23.7 billion to \$27.1 billion.⁷

⁵ There has been insufficient analysis to determine whether that one-third of the population is shut out from receiving cable due to their inability to pay for cable service.

⁶ Broadcasting and Cable Magazine, April 3, 1995 at 8-9.

⁷ Broadcasting and Cable Magazine, February 27, 1995 at 56.

Current ownership rules allow broadcast owners sufficient flexibility to operate profitably and compete with other video outlets. To the extent that some television properties are in financial difficulty, increases in ownership caps are not the remedy. Increasing ownership limitations will not serve the public interest by creating a new mechanism to save failing stations from going dark. Current ownership limits do not prevent healthy companies from purchasing failing properties; they only prevent one company from owning an excessively large concentration of broadcast stations on either a local or national basis. There are a sufficient number of television owners, or potential new entrants, whose ownership interests are sufficiently below the current national limitations that they could take over and revive failing stations without violating the current ownership limits.

AFTRA submits that the effects of the 1992 revisions in radio ownership rules is a fair measure by which to project the likely affect of increases in national ownership caps in television. However, it has only been a few years since the Commission increased national ownership limitations and permitted local duopolies in radio. There has been insufficient time to analyze the results of those ownership rules changes and to project the effects of similar rule changes in television.⁸ AFTRA respectfully

⁸ In the Radio Station Ownership Report, issued by the Mass Media Bureau in 1994, the Bureau Staff noted "The Commission's ownership restrictions are intended in part, to promote diversity. We are not able, at this point, to assess the overall impact of changes in commercial radio station ownership on the

suggests that the Commission study and determine whether, in fact, the new radio ownership rules saved any failing radio stations or merely increased the holdings of radio group owners whose holdings were at or near the prior ownership caps.

III. INCREASES IN TELEVISION OWNERSHIP LIMITATIONS WILL HAVE AN
ADVERSE IMPACT UPON DIVERSITY IN NEWS AND PUBLIC AFFAIRS
PROGRAMMING.

The Commission has asked whether ownership diversity has an effect on viewpoint diversity.⁹ Based upon AFTRA's observations of the industry, ownership diversity has a direct effect on viewpoint diversity in the areas of news and public affairs. To the extent that differing station owners are competing for news stories, and are using different journalists and news crews to cover news events and public affairs commentary and analysis, the viewer receives the benefit of their differing perspectives, analyses and approaches to news events and issues of public interest. On the other hand, to the extent that station news operations are consolidated under

availability of diverse viewpoints and programming to the public. To do so, we would need more information regarding changes in the amount of news and public affairs programming and general changes in formats that have occurred in addition to the data on the changes in the number of owners of stations in and individual market." Radio Station Ownership Report, Mass Media Bureau Policy Analysis Branch, Policy and Rules Division at 34. (November 8, 1994)

⁹ NPRM at 43.

single owners and/or news and public affairs information is recycled to the public through consolidation of ownership or the reduction in newsgathering personnel for cost cutting purposes, the public receives fewer differing viewpoints on news and public affairs issues and is consequently less well served. AFTRA believes, therefore, that further increases in the television ownership limitations should not be permitted at this time, except as specifically designed to provide opportunities to those groups which have been historically excluded from the broadcast marketplace.

Increasing ownership limitations will, by definition, reduce the diversity of opinion in the broadcast marketplace. It is axiomatic that when one company can own a larger number of stations, fewer companies will have opportunities to participate in the broadcast marketplace.¹⁰ AFTRA observes that it has not been the case that where one party owns more stations, its strategy would be to put on sufficiently varied programming menus in the area of news and public affairs to appeal to all substantial interests. Indeed, AFTRA has observed that the opposite is true. Where companies have owned multiple properties in a local market, such companies have tended to reduce the level of staffing and personnel needed to provide more diverse news and public affairs programming by reusing news and public affairs material gathered by

¹⁰ NPRM at 27-28.

one outlet and distributing it over its other outlets.¹¹

AFTRA submits that increasing ownership limitations will produce the same phenomenon on a national scale. It will encourage broadcast companies to engage in economies of scale. AFTRA notes that when the Commission relaxed ownership limitations in the radio field in 1992, companies utilized the flexibility granted under the new rules for exactly the purpose of achieving economies of scale in radio. There is no reason to believe that the same motivations will not be present in the television field if ownership limitations are relaxed. Although consolidation and economies of scale are entirely appropriate with respect to many business operations, when it comes to news and public affairs programming, such consolidation and economies of scale are inherently adverse to the public interest because they tend to reduce the availability of new original news and public affairs programming or "homogenize" the programming that is available. It consequently reduces diversity in programming. For example, when Shamrock Broadcasting increased its national holdings and acquired a duopoly in San Francisco after the Commission's revised its radio ownership rules

¹¹ For example, in markets where one company owns radio and television stations in the same market (such as at Westinghouse's KDKA-TV and KDKA-AM in Pittsburgh, and the network owned and operated stations in Los Angeles), companies are using material gathered for their television operations and recycling it for their radio operations. In the radio duopoly situations that AFTRA has observed in markets such as San Francisco, Buffalo NY, and others, companies are sharing news and public affairs information between the stations, rather than having each station gather, analyze and disseminate its own news and public affairs independently.

in 1992, it automated KNEW-AM in San Francisco which had previously used its own independent staff of announcers and newsmen to provide original locally-generated programming. The company also automated KLAC-AM in Los Angeles within five months after its significant purchase in radio stations.¹² The listeners in those two cities lost independent, originally-produced programming as a result.

It has been AFTRA's experience with large group owners like Westinghouse, Fox, and others that news reports are recycled from one station to another within their group as a cost saving measure, except where the information can only be provided by a non-company owned source. To the extent that one company can own even more stations nationwide, it will exacerbate this practice. This means for example, as group owners acquire more and more outlets, they will recycle their news and public affairs programming through their own owned and operated stations even more. In contrast, today many independent stations and smaller group-owned stations exchange news material on the "open market" with differing independent and group owned stations and cable news operations, in addition to the networks with whom they may be affiliated. However, when such smaller operations are acquired by larger broadcast operations, they will be required to carry the news and information

¹² On July 31, 1993, Shamrock Broadcasting acquired properties previously owned by Malrite Broadcasting, including KNEW-AM and KSAN-FM in San Francisco and KLAC-AM and KZLA-FM in Los Angeles, each of which had provided separate locally-originated programming prior to the consolidation under Shamrock.

provided by their owned company's other properties, rather than from a variety of different sources generated different news organizations.

The problem is made worse by companies which over-leverage themselves to acquire additional broadcast properties and then cut costs to finance these purchases. It has been AFTRA's observation that in such situations, companies cut costs in the areas of news and public affairs programming, which is a disservice to the communities which such broadcasters are licensed to serve. Further, such cost-cutting not only adversely affects current employment but also, reduces the pool of experienced broadcast journalists for the future as repeated displacement from jobs causes employees to choose alternate professions. AFTRA submits that before entertaining any increase in the limitations on current television ownership restrictions, an analysis should also be made of the effect of the 1992 radio ownership limitation rules upon employment patterns in radio.

As previously noted, AFTRA does support small incremental liberalization of ownership restrictions which are directly tied to providing opportunities for entry in the broadcast field to traditionally excluded groups, such as women and minorities. AFTRA believes that such limited liberalization, which is specifically designed to provide opportunities for such groups, will serve the public interest by providing a mechanism to encourage the entry of new viewpoints and perspectives into the marketplace.

IV. THE 'ONE TO A MARKET' RULE SHOULD BE RETAINED

The Commission has asked whether the radio-television cross ownership rule, also known as "the one to a market" rule, should be retained. AFTRA observes that the current rule has operated effectively and should therefore be maintained. The current rule, as structured, is designed to promote diversity of opinion in a local market. Absent compelling circumstances, the goal of diversity should be an overriding concern which should not be lightly diminished or dismissed. The current rule provides an opportunity for the Commission to review whether compelling circumstances exist and to review, on a case by case basis, whether waivers of the rule are appropriate in individual circumstances to serve the public interest. AFTRA believes that the Commission has exercised its ability well and should retain its authority and ability to continue to do so.

V. LOCAL MARKETING AGREEMENTS IN TELEVISION SHOULD BE CURTAILED

AFTRA submits that local marketing agreements (LMAs) are not in the best interests of the local communities which licensees are designed to serve. In markets where television stations have entered into LMAs, they have not been used to increase diverse news and public affairs programming. On the contrary, they have been used to re-cycle news from one station to another within a local

market, thereby reducing diversity of news within that market. For example, in San Francisco, KOFY-TV eliminated its locally originated 10 p.m. news program to carry news produced by KRON-TV, another station in the San Francisco market. The news programming delivered on KOFY was virtually the identical to that delivered on KRON at 11 p.m. (except for updates on late-breaking news stories). Similarly, in Boston the news programming carried by WSBK-TV is the same re-treaded news carried and provided by WBZ-TV, a larger station in the same market. It does not add additional viewpoints on news and public affairs issues to the local Boston viewing community. The continuation of LMAs will not operate to enhance diversity in the local market place. On the contrary, they will operate to reduce diversity in local news and public affairs programming. Although LMAs should therefore be prohibited in television, AFTRA suggests that already established LMAs could be "grandfathered" to minimize disruption of established contractual relationships in the broadcast marketplace.

VI. CONCLUSION

AFTRA respectfully suggests in conclusion that there is no reason to increase caps in national or local ownership limitations unless they operate to promote diversity in news and public affairs programming. Based upon AFTRA's observations of the current state of the industry as well as the effects of previous de-regulatory

actions by the Commission, increases in ownership caps operate to diminish, and not enhance, diversity in news and public affairs programming. No increases in ownership caps should be initiated until further study has been made of the effects of ownership limitation increases in the radio field. The Commission should consider carefully that once television ownership caps are raised, if it later determines that such increases have had an adverse effect upon diversity in the industry, it will be near impossible to revise the ownership limits downward.

Small increases in ownership limitation which are designed to foster the entry of minorities and women into the broadcast television marketplace are appropriate, as such changes will act to foster the entry new viewpoints and diversity of opinion into the marketplace.

To promote diversity in local markets, the radio-television cross ownership rule should be retained in its present form; however, local marketing agreements in television should be curtailed.

Thank you for the opportunity to present our comments.

4-13-95

Date

Respectfully Submitted



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American Federation of Television
and Radio Artists

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Date



Jack Golodner
President
Department For Professional Employees